LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 26 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 494

NORMAN MASTRIAN, *Petitioner*,

vs.

STATE OF MINNESOTA, *Respondent*.

PETITION FOR WRIT OF CERTIORARI

JONAS G. SCHWARTZ
7th Floor, Pillsbury Building
Minneapolis, Minnesota

COCHRANE, THOMSON & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota

EDWARD J. DRURY
830 Minnesota Building
Saint Paul, Minnesota

Attorneys for Petitioner

CApital 2-2701 — Review Publishing Co., 141 E. 5th St., St. Paul 1, Minn. — CApital 2-2701

INDEX

	PAGE
QUESTION FOR REVIEW	2
CONSTITUTIONAL PROVISIONS	2
STATEMENT OF THE CASE	3
ARGUMENT	5
APPENDIX	11
Exhibit 1. Indictment	11
Exhibit 2. Motion to Reduce Bail	13
Exhibit 3. Affidavit of Petitioner Norman Mastrian	14
Exhibit 3A. Affidavit of Petitioner Norman Mastrian	15
Exhibit 3B. Affidavit of Petitioner's Attorney	18
Exhibit 3C. Affidavit of Petitioner's Mother	19
Exhibit 4. Order and Memorandum by District Judge John W. Graff	21
Exhibit 5. Notice of Appeal to Supreme Court of Minnesota	25
Exhibit 6. Opinion of Supreme Court of Minnesota	26

AUTHORITIES CITED

Cases:	PAGE
Application of Shetsky, 239 Minn. 463, 60 N.W. 2d 40 (1953)	6, 23
Bandy v. U. S., 81 S. Ct. 197 (1960)	7
Carbo v. U. S., 82 S. Ct. 662 (1962)	7
Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951)	6, 7
Statutes:	
28 U.S.C. 1257 (3)	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. .....

NORMAN MASTRIAN, *Appellant*,

vs.

STATE OF MINNESOTA, *Respondent*.

PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari issue, to review the per curiam opinion and judgment of the Supreme Court of the State of Minnesota made and entered June 28, 1963, in the above-entitled case, wherein it was entitled State of Minnesota, Respondent, vs. Norman Mastrian, Appellant.

1. The official reference of the opinion and decision rendered in the Supreme Court of Minnesota is file number 39134. The opinion and decision are reported in 122 N.W. 2d 621. A copy of said opinion is hereto appended.

2. The date of the judgment sought to be reviewed is June 25, 1963. The opinion was filed on June 28, 1963.

3. The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by Writ of Certiorari is Title 28, United States Code, Section 1257 (3).

4. The ground on which the jurisdiction of this Court is invoked is that the Supreme Court of the State of Minnesota has decided a federal question of substance in a way not in accord with applicable decisions of the Supreme Court of the United States.

QUESTION FOR REVIEW

The question presented for review is:

1. Where a family man with limited financial resources who has lived all his life in the State of Minnesota and never been incarcerated in a penal institution is charged with first degree murder, is $100,000 bail "excessive" under the Eighth Amendment to the United States Constitution when it is shown that bail in that amount is above the norm for this offense and the State produces no evidence to explain the deviation from the norm?

CONSTITUTIONAL PROVISIONS

1. United States Constitution, Amendment VIII.

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

2. State of Minnesota Constitution, Article I, Section 5.

"* * * Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishment be inflicted."

3. State of Minnesota Constitution, Article I, Section 7.

"* * * All persons shall before conviction be bailable by sufficient sureties except for capital offenses when the proof is evident or the presumption great; * * *."

STATEMENT OF THE CASE

On May 8, 1963, an indictment was returned by the Ramsey County Grand Jury in the State of Minnesota charging the petitioner with murder in the first degree.[1] The petitioner had previously been arrested by the City of Saint Paul Police Department on April 18, 1963, and a complaint was filed at that time charging the petitioner with first degree murder. Thereafter, bail was set by a Judge of the Municipal Court of the City of Saint Paul in the amount of $100,000. After the indictment was returned by the Ramsey County Grand Jury, bail was set by the Ramsey County District Court in the amount of $100,000.

The petitioner then filed a motion to reduce bail in the State District Court of Ramsey County and arguments on the motion were heard by the Court on May 22, 1963.[2] In support of the motion for reduction of bail, the petitioner submitted to the Court affidavits by his mother, his attorney and himself.[3] The motion to reduce bail in the District Court was based on the following ground as set forth in the motion:

> "* * * For the reason that the $100,000 bail previously set is arbitrary, unreasonable and excessive and violates provisions of the United States Constitution and the Constitution of the State of Minnesota."

Petitioner's memorandum of law and oral argument submitted to the Court on the motion to reduce bail specifically stated that the $100,000 bail was arbitrary and excessive under Amendment VIII to the United States Constitution and

---

[1] A copy of the indictment is set forth in the appendix as Exhibit 1.

[2] A copy of the motion to reduce bail is set forth in the appendix as Exhibit 2.

[3] The affidavits are set forth in the appendix as Exhibits 3, 3A, 3B, 3C.

Sections 5 and 7 of Article I of the Minnesota Constitution. On May 23, 1963, Ramsey County District Judge John W. Graff filed an Order denying the motion for reduction of bail and attached thereto a memorandum of law in connection with his Order denying the reduction in bail.[4]

On June 14, 1963, the petitioner appealed to the Supreme Court of Minnesota, the court of last resort in Minnesota, from the District Court's Order of May 23, 1963, denying the reduction in amount of bail.[5] Briefs were filed by the petitioner and the State, and the matter was decided by the Minnesota Supreme Court on the briefs without oral argument. On June 28, 1963, the Court in a per curiam decision affirmed the ruling of the trial court in denying the motion to reduce the $100,000 bail.[6] At the present time, the petitioner is incarcerated in the Ramsey County Jail in Saint Paul, Minnesota, under $100,000 bail.

The indictment in this case charging petitioner with murder in the first degree alleges that petitioner murdered one Carol Thompson. Two other individuals have been indicted by the Grand Jury for the same crime. While the indictment against each of the three defendants alleges that the particular defendant did the actual killing, the State has indicated it intends to prove that Saint Paul attorney T. Eugene Thompson, the husband of the victim Carol Thompson, contacted petitioner Mastrian to hire another person to murder his wife. It is contended that petitioner hired one Dick W. C. Anderson to do the actual killing. Bail was also set by the District Court in the amount of $100,000 on defendants

---

[4] The Order and opinion are listed in the appendix as Exhibit 4.

[5] The notice of appeal is set forth in the appendix as Exhibit 5.

[6] The opinion of the Minnesota Supreme Court is set forth in the appendix as Exhibit 6.

T. Eugene Thompson and Dick W. C. Anderson. Anderson has not been able to meet the bail and remains in jail. Thompson met the $100,000 bail and has been released from custody.

ARGUMENT

The Eighth Amendment to the United States Constitution relates to the question of bail. It provides as follows:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Minnesota Constitution has two provisions relating to bail—the first of which is almost a direct quote of the United States Constitution's Eighth Amendment. Article I, Section 5 provides that:

> "Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted."

The due process clause, Section 7 of Article I, contains the second Minnesota Constitution provision relating to bail, as follows:

> "* * * All persons shall before conviction be bailable by sufficient sureties except for capital offenses when the proof is evident or the presumption great; * * *."

It is petitioner's contention that the $100,000 bail set for the petitioner in this case is "excessive" under the Eighth Amendment to the United States Constitution and that the Minnesota Supreme Court in affirming the lower court's order denying the motion to reduce the $100,000 bail decided a federal question of substance not in accord with decisions of the United States Supreme Court. Obviously, the word

"excessive" as applied to bail matters cannot be defined precisely so that any court would know in a given situation exactly when bail is "excessive". However, certain standards have been set forth in statutes and cases to guide the courts in their determinations in setting bail. In general, bail is to be fixed at an amount reasonably calculated to hold the accused available for trial and its consequence. *Stack v. Boyle*, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951). Rule 46(c); Federal Rules of Criminal Procedure, 18 U.S.C., sets forth the standards in the Federal Courts, as follows:

> "If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant."

The Minnesota Supreme Court, prior to the opinion in the instant case, set forth its ideas on the purpose of bail. In *Application of Shetsky*, 239 Minn. 463, 60 N.W. 2d 40, 46 (1953), the Court said:

> "The primary purpose of bail in a criminal case is not to increase the revenue of the state or to punish the surety but to insure the prompt and orderly administration of justice without unduly denying liberty to the accused whose guilt has not been proved. Its purpose is to relieve the accused of imprisonment and the state of the burden of detaining him pending the trial and at the same time, by placing him in the protective custody of a surety—a jailer of his own choosing, to insure his presence for trial at the call of the court without in any way delaying, impairing, or unduly burdening the administration of justice or in any manner prejudicing the state in its prosecution."

The United States Supreme Court has enunciated some of the factors a Court should take into consideration in its attempt to arrive at a logical determination as to the amount of bail that would be reasonable in a particular case. In *Carbo v. U. S.*, 82 S. Ct. 662, 665 (1962), the appellant was attempting to get bail on appeal from a conviction and 25-year sentence for violations of the Anti-Racketeering Act and the interstate extortion statute. Mr. Justice Douglas, in discussing some of the elements to be considered in fixing bail, used these words:

> "The right to bail is an important part of our criminal procedure and is not to be denied merely because of the community's resentment against the accused nor because of an evil reputation. While a bond is usually required to insure the defendant's appearance, 'There may be other deterrents to jumping bail: long residence in a locality, the ties of friends and family, the efficiency of the modern police. All these in a given case may offer a deterrent at least equal to that of the threat of forfeiture.'"

There are other considerations. When a man is imprisoned because he is unable to meet the bail, he has no opportunity to investigate his case or effectively cooperate with his lawyer and prepare his defense. Further, as a practical matter, he cannot while incarcerated earn money which is essential for the protection of his family and the costs of his defense. See, generally, *Bandy v. U. S.*, 81 S. Ct. 197 (1960).

It is the petitioner's position with respect to the setting of bail in this matter that the State has consistently argued for an amount of bail greatly in excess of the norm for the crime charged in the State of Minnesota and thus the bail is excessive under the Eighth Amendment to the Constitution. This aspect of the bail problem was discussed in *Stack v. Boyle*,

342 U.S. 1, 6, 72 S. Ct. 1, 4, 96 L. Ed. 3 (1951). In that case, twelve defendants were indicted in the Southern District of California and charged with violating the Smith Act. Bail was eventually fixed at $50,000 on each petitioner. It was not denied in that case that the bail was higher than that usually imposed for offenses with like penalties. Mr. Chief Justice Vinson discussed the matter, as follows:

> "To infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act. * * * If bail in an amount greater than that usually fixed for serious charges of crimes is required in the case of any of the petitioners, that is a matter to which evidence should be directed in a hearing so that the constitutional rights of each petitioner may be preserved."

There appears to be no question but that bail in the amount of $100,000 for a first degree murder charge in the State of Minnesota is an unusually high bail and certainly far above the norm. The affidavit of petitioner's attorney reflects the bail that has been set in various well-known murder cases in Minnesota and also shows that the bail list in the Hennepin County (which includes the City of Minneapolis) Attorney's office suggests that bail shall be in the amount of $10,000 for first degree murder. This bail list does not mean that the Hennepin County Attorney would not ask for a higher bail in a particular murder case but it does reflect the normal bail for this type of offense.

In this case, the State has presented only the bare allegation in the indictment that the petitioner is charged with first degree murder. There is no allegation of any kind that the petitioner would flee the jurisdiction or that he would impede the due administration of justice by threatening witnesses or by doing any other act. The affidavits on file on behalf of the

petitioner reflect that the petitioner, his parents, and his entire family have lived in this area all of their lives. They have all worked here, own homes and have raised their families here. In addition, the affidavits show that petitioner went to school in Minnesota, is a member of various organizations in the City of Minneapolis, owns a home and is generally a man of limited financial resources. The affidavits further show that he has never been incarcerated in a penal institution. It is the petitioner's contention that if the State wanted bail set in an amount beyond the norm for the crime charged in this case, evidence should have been introduced to justify the request for the unusually high bail. Petitioner has argued at each stage of this proceeding that the State should come forward with any evidence it might have but none was ever produced. Consequently, the petitioner contends that $100,000 on a family man under the facts as known to the Court is arbitrary, unreasonable and excessive under the Eighth Amendment to the United States Constitution.

Two other defendants in this matter are also held under $100,000 bail. One of the defendants, Dick W. C. Anderson, has not met the bail and is still in jail. The other defendant, T. Eugene Thompson, husband of the alleged victim, Carol Thompson, has met the $100,000 bail and is free.[7] This aspect of the bail situation, where an amount of bail is requested in the same amount for different defendants, was discussed by Mr. Justice Jackson in the *Stack* case, as follows:

> "Each defendant stands before the bar of justice as an individual. Even on a conspiracy charge, defendants do not lose their separateness or identity. While it might

[7] On March 27, 1963, three weeks after his wife's death, Thompson caused his personal financial statement to be published in the Saint Paul Dispatch newspaper. The financial statement listed his net worth at $115,000 with gross income of $41,693 in 1962, $36,196 in 1961 and $30,358 in 1960.

be possible that these defendants are identical in financial ability, character and relation to the charge, elements Congress has directed to be regarded in fixing bail, I think it violates the law of probabilities."

The bail set for petitioner and the other two defendants should depend on the circumstances and the facts regarding each individual's particular situation. That has not been done in this case. A blanket bail has been set for the crime charged—not for the circumstances of each individual's financial ability, family background and history.

It may well be that $100,000 bail for a person with great resources might not be adequate to insure that person's availability for trial. That is not the situation with this petitioner. There exists a great difference in the financial resources and background of the defendants in this case. Bail in the amount of $100,000 for this petitioner with his limited financial resources and background is clearly excessive and, in effect, deprives the defendant of his right to bail.

WHEREFORE, petitioner prays that this Court hear and pass upon these matters, by issuance of its Writ of Certiorari.

Respectfully submitted,

JONAS G. SCHWARTZ
7th Floor, Pillsbury Building
Minneapolis, Minnesota

COCHRANE, THOMSON & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota

EDWARD J. DRURY
830 Minnesota Building
Saint Paul, Minnesota

APPENDIX

Exhibit 1

STATE OF MINNESOTA, COUNTY OF RAMSEY
In the District Court, Second Judicial District

THE STATE OF MINNESOTA

vs.

NORMAN MASTRIAN

INDICTMENT

Norman Mastrian is accused by the Grand Jury of the County of Ramsey, by this Indictment, of the crime of Murder in the First Degree committed as follows:

The said Norman Mastrian on the 6th day of March, A.D. 1963, at the City of Saint Paul in said County then and there being, did wilfully, unlawfully and feloniously, without authority of law and without excuse or justification, and with a premeditated design on the part of him, the said Norman Mastrian, Defendant, to then and there effect the death of a human being, to wit: one Carol Thompson, did kill and murder the said Carol Thompson by means of a weapon, to wit: a gun, a more particular description of said gun being to this Grand Jury unknown, by striking and beating the said Carol Thompson with said gun, and by means of a weapon, to wit: a knife, a more particular description of said knife being to

this Grand Jury unknown, by then and there stabbing the said Carol Thompson with said knife and thereby because of the striking, beating and stabbing, did inflict upon the body of said Carol Thompson mortal wounds of which said mortal wounds the said Carol Thompson did languish, and, languishing, did live for several hours, and then said Carol Thompson did die on March 6, 1963, of the mortal wounds and injuries so by the said Defendant inflicted as aforesaid, Contrary to the form of the Statute in such cases made and provided, and against the peace nd dignity of the State of Minnesota.

Dated at the City of Saint Paul, in the County of Ramsey and State of Minnesota, this 8th day of May, 1963.

KARL V. KLEIN
Foreman of Grand Jury

Names of witnesses examined before the Grand Jury:

John Mercado	George Barkley	T. Eugene Thompson
John Perry	Richard Sharp	John S. Connolly
Karin Lawler	Larry McMullen	Sheldon Morris
Theodore Elzerman	Vernon Phillips	(with waiver)

Presented to the Court in open court by the Forman of the Grand Jury, in the presence of the Grand Jury, and filed with the Clerk this 8th day of May, 1963.—E. J. FITZGERALD, Clerk, by GEORGE F. KNOPH, Deputy.

Exhibit 2

State of Minnesota
County of Ramsey

District Court
Second Judicial District

STATE OF MINNESOTA

vs.

NORMAN MASTRIAN

MOTION TO REDUCE BAIL

To the Honorable Judge of said Court:

The defendant moves the Court for an order reducing the bail in the above entitled action for the reason that the $100,000 bail previously set is arbitrary, unreasonable and excessive and violates provisions of the United States Constitution and the Constitution of the State of Minnesota

EDWARD J. DRURY
Attorney for the Defendant
809 Commerce Building
St. Paul, Minnesota

Exhibit 3

State of Minnesota
County of Ramsey.

In the District Court
Second Judicial District

STATE OF MINNESOTA

vs.

NORMAN MASTRIAN

AFFIDAVIT

State of Minnesota
County of Ramsey—ss.

Norman Mastrian, being first duly sworn on oath, deposes and states as follows:

That he purchased his home at 8032 Madison Street Northeast, Spring Lake Park, Minnesota, in 1958 for approximately $17,900.

That he paid approximately $4,700 as a down payment on the house which he obtained from the sale of his car and savings.

That the mortgage on the home is held by Minneapolis Savings and Loan Association and that his father-in-law holds a contract for deed on the home in the amount of $2,500.

That his father-in-law has made the payments on the mortgage since your affiant was injured in an automobile accident and that your affiant makes payments to his father-in-law on the home.

That he owns a 1955 Oldsmobile valued at approximately $250.00.

That he and his wife own the household goods most of which were purchased new when they were married in 1957.

That he owns approximately 400 shares in Telostat Corporation, where he worked in late 1951 and early 1962 which to the best of his knowledge and belief is now worth approximately 38 cents per share.

That he has savings in low four figures.

NORMAN MASTRIAN

(Jurat)

Exhibit 3A

State of Minnesota
County of Ramsey

District Court
Second Judicial District

STATE OF MINNESOTA, *Plaintiff*

vs.

NORMAN MASTRIAN, *Defendant*

AFFIDAVIT

State of Minnesota
County of Ramsey—ss.

Norman Mastrian, being first duly sworn on oath, deposes and states as follows:

That he is the defendant in the above entitled action.

That he was born in Duluth, Minnesota, on December 7, 1924, and attended St. Anthony parochial grade school in that city.

That his family moved from Duluth to Minneapolis in 1936 and thereafter he completed the seventh and eighth grades at Sheridan grade school in Minneapolis before attending Edison High School from which he was graduated in 1942.

That he enlisted in the U.S. Navy in the summer of 1942 and served in both the Atlantic and Pacific theatre operations before receiving his honorable discharge on January 11, 1946.

That he entered Macalester College in Saint Paul from which he graduated in 1952 with a Bachelor of Arts Degree with a major in Journalism. That while attending Macalester College he worked for Sears, Roebuck and Company, Grain Belt Brewery, Yellow Cab Company and worked nights at the Minneapolis Post Office.

That after graduation from Macalester College he worked for approximately fourteen months as a salesman for Life TV in Minneapolis in 1953 and 1954.

That from 1954 to 1958 he was employed as a salesman for Northern Air Conditioning in Minneapolis and thereafter for approximately one year was employed as a salesman for Yale Engineering Company in Minneapolis until he was severely injured in an automobile accident.

That for approximately one year after his car accident his wife worked as a waitress at Jax Cafe in Minneapolis.

That from the fall of 1961 until May 1962 he was employed by Telostat Corporation in Hopkins, Minnesota.

That since the spring of 1962 he and his wife have been conducting a costume jewelry business under the name of Ferris Enterprises.

That he was married to Eve M. Mastrian in 1957 and they have lived in the same home at 8032 Madison Street Northeast Spring Lake Park, Minnesota, since 1958 and they still reside at that address.

That he and his wife have two children and that the two children were baptized at Saint Timothy's Catholic Church, Spring Lake Park, Minnesota.

That he is presently a member of Veterans of Foreign Wars Ballentine Post Number 246 in Minneapolis.

That for a period of approximately six years prior to joining the VFW Ballentine Post he was a member of the American Legion Richfield Post and American Legion Falldin Post Number 555 in Minneapolis.

That he has never been incarcerated in a penal institution. That he does not have means with which to meet either the collateral or premium for a $100,000.00 bail bond.

NORMAN MASTRIAN

(Jurat)

Exhibit 3B

State of Minnesota — District Court
County of Ramsey — Second Judicial District

STATE OF MINNESOTA

vs.

NORMAN MASTRIAN

AFFIDAVIT

State of Minnesota
County of Ramsey—ss.

Edward J. Drury, being first duly sworn on oath, deposes and states as follows:

That he is the attorney representing Norman Mastrian in the above entitled action.

That he inquired of the Hennepin County Attorney's Office as to whether that office had a bail list for various offenses and was informed that the County Attorney's office in Hennepin County does have a bail list which is a general guide to the amount of bail requested for various offenses.

That the Hennepin County Attorney's Office bail list calls for bail in the amount of $10,000.00 for first degree murder, your affiant was informed.

That your affiant was informed that the bail for Ronald Steeves, presently on trial for first degree murder in Hennepin County was set at $15,000.00.

That to the best of your affiant's knowledge and belief, the bail for Robin Shetsky was set at $20,000 and the bail for Dr. Axelrod was set at $15,000 before trial and $50,000 on appeal after conviction and sentence.

Further your affiant sayeth not.

EDWARD J. DRURY

(Jurat)

Exhibit 3C

State of Minnesota — District Court
County of Ramsey — Second Judicial District

STATE OF MINNESOTA, *Plaintiff*

vs.

NORMAN MASTRIAN, *Defendant*.

AFFIDAVIT

State of Minnesota
County of Ramsey—ss.

Mrs. Helen Mastrian, being first duly sworn on oath, deposes and states as follows:

That she is the mother of Norman Mastrian, the defendant in the above entitled action.

That she and her husband, Joseph Mastrian, reside at 2132 Grand Northeast, Minneapolis.

That they have lived in Minneapolis since moving from Duluth in 1936.

That her husband, Joseph Mastrian, has worked for the same company, George A. Clark and Sons, in Minneapolis since the family moved to Minneapolis in 1936.

That she has four children besides her son Norman, three of whom are married, and all live in the Minneapolis area.

That her son, Norman Mastrian, was born in Duluth on December 7, 1924, and attended Saint Anthony parochial grade school in that city.

That after the family moved to Minneapolis, her son Norman attended Sheridan grade school and Edison High School in Minneapolis from which he graduated in 1942.

That while in high school Norman participated in the Golden Gloves boxing competition.

That Norman enlisted in the United States Navy in 1942 and was honorably discharged in 1946.

That he thereafter entered Macalester College in Saint Paul and graduated from that school and while going to school had a number of different jobs.

That after graduating from Macalester College, her son Norman worked at Life TV in Minneapolis, Northern Air Conditioning Company, Yale Engineering Company, and the Telostat Corporation.

That her son Norman was married to Eve M. Mastrian in 1957 and that they have two children and have lived in the same home since 1958.

HELEN MASTRIAN

(Jurat)

Exhibit 4

State of Minnesota
County of Ramsey

District Court
Second Judicial District

STATE OF MINNESOTA, *Plaintiff*

vs.

NORMAN MASTRIAN, *Defendant*

File 21133

ORDER DENYING REDUCTION IN AMOUNT OF BAIL

Defendant's motion for a reduction in the amount of bail came on for hearing before the undersigned under date of May 22, 1963. Defendant appeared in person and was represented by Edward J. Drury, Esq., 809 Commerce Building, St. Paul 1, Minnesota. The State of Minnesota was represented by Stephen L. Maxwell, Esq., Assistant Ramsey County Attorney, 328 Court House, St. Paul 1, Minnesota. The matter was submitted on affidavits submitted on behalf of the defendant and upon oral arguments of counsel.

After due consideration, the motion is denied. The memorandum attached hereto is made a part of the within order.

Dated at St. Paul, Minnesota, this 23rd day of May, 1963.

JOHN W. GRAFF
District Judge

MEMORANDUM

The defendant has made a motion seeking an order reducing the amount of bail in this case. Defendant contends that the amount of bail previously set in the amount of $100,000.00 is arbitrary, unreasonable and excessive and violates the provisions of both the Constitution of the State of Minnesota and of the United States.

Article I, Section 5 of the Constitution of the State of Minnesota provides that excessive bail shall not be required. The Constitution does not state what is or is not excessive, and as far as I know there is no state statute implementing the constitutional provision as to what is or is not excessive. In this connection M.S.A. 629.52 provides that bail may be taken in such sum as in the opinion of the judge will secure the appearance of the accused at the court where he is to be tried.

The defendant in this case was under date of May 8, 1963, indicted by the grand jury which indictment charges the defendant with having committed the crime of murder in the first degree. The penalty for murder in the first degree prescribed by statute (M.S.A. 619.[illegible]) is imprisonment for life in the state prison. Prior to the Act of April 22, 1911, Chapter 387, murder in the first degree was punishable by death. M.S.A. 629.52, prior to the amendment of April 20, 1961, Chapter 561, Section 16, provided that a person punishable by death shall not be admitted to bail "if the proof is evident or the presumption great." However, prior to the 1961 amendment of M.S.A. 629.52 it was clear that a person charged with murder in the first degree was entitled to bail before conviction. See *State v. Pett*, 253 Minn. 429, 92 N.W. 2d 205.

The State in this case does not deny that the defendant is entitled to bail but insists that bail should not be less than

$100,000.00. This is the amount which has heretofore been fixed and which defendant by this motion seeks to have reduced. Defendant contends that the amount is excessive. Defendant has filed affidavits that he has been a resident of the state during his entire lifetime with the exception of his military service, that he has a home in Spring Lake Park, Minnesota, where he has resided with his wife and family since 1958, that he has some property but cannot raise the necessary amount that would be required to pay the premium on a $100,000.00 bond nor can he put up the necessary collateral that would be required for such a bond. Upon inquiry by the Court, the defendant has indicated he could post a $20,000.00 bond. The State contends that in the murder charged by the indictment the defendant Mastrian was the person who procured another to do the killing; that the seriousness of the charge, the implication of Mastrian as such procurer, the fact that upon conviction life imprisonment may be imposed require that bond be set in a sufficiently high amount to assure his appearance in court. The State contends that the amount of bail should not be less than $100,000.00.

In re application of Shetsky for Return of Bail Money, 239 Minn. 463, 60 N.W.2d 40, the Court made the following statements concerning bail at pp. 470-471:

> "The purpose of a recognizance or bail bond is to secure the attendance of the accused in order that all questions touching upon his guilt or innocence may be determined. . . ."
>
> "The primary purpose of bail in a criminal case is . . . to insure the prompt and orderly administration of justice without denying liberty to the accused whose guilt has not been proved. Its purpose is to relieve the accused of imprisonment and the state of the burden of detaining him pending the trial and at the same time, by placing

him in the protective custody of a surety—a jailer of his own choosing—, to insure his presence for trial at the call of the court without in any way delaying, impairing or unduly burdening the administration of justice or in any manner prejudicing the state in its prosecution."

With these principles in mind and the provisions of M.S.A. 629.52 that bail shall be taken in such sums as in the opinion of the judge will secure the appearance of the defendant, and having in mind the seriousness of the offense with which the defendant is charged, it must be apparent, based upon what has been presented to the Court, that bail must be in a substantial amount. The amount which the defendant can furnish, viz. $20,000.00, is not, based upon which has been presented to the Court, regarded as sufficient to secure the appearance of the defendant. It may well be a moot question as to what amount may be sufficient to secure his appearance since it must be more than $20,000.00 and the defendant has indicated he cannot raise more than this amount. Under these circumstances no sound reason is perceived at this time, based upon what has been presented, why any change should be made in the amount of bail of $100,000.00 which is the amount at which it is presently set.

GRAFF, J.

Exhibit 5

State of Minnesota
County of Ramsey

District Court
Second Judicial District

STATE OF MINNESOTA, *Plaintiff*

vs.

NORMAN MASTRIAN, *Defendant*

NOTICE OF APPEAL

File No. 21133

To: Clerk of District Court, Second Judicial District; William Randall, Ramsey County Attorney; Walter F. Mondale, Attorney General, State of Minnesota; Supreme Court, State of Minnesota.

PLEASE TAKE NOTICE that the undersigned defendant, by his attorney, Edward J. Drury, hereby appeals to the Supreme Court of the State of Minnesota from the Court's Order Denying Reduction in Amount of Bail in the above-captioned case entered on the 23rd day of May, 1963.

NORMAN MASTRIAN
By: EDWARD J. DRURY
Attorney for Norman Mastrian
809 Commerce Building
St. Paul, Minnesota

Exhibit 6

No. Sp. — Ramsey County — Per Curiam

STATE OF MINNESOTA, *Respondent*

39134 vs.

NORMAN MASTRIAN, *Appellant*

Endorsed: Filed June 28, 1963
Mae Sherman, Clerk, Minnesota Supreme Court

SYLLABUS

The record fails to establish abuse of discretion in refusing application to reduce the $100,000 bail fixed by the district court for defendant indicted for murder in the first degree.

Affirmed.

OPINION

PER CURIAM

On May 8, 1963, defendant Norman Mastrian was indicted by the grand jury of Ramsey County for murder in the first degree. Bail was set by the district court at $100,000. An application for reduction was denied and defendant appeals.

We review the order although the question of whether appeal is available in such a case is doubtful.[1] Constitu-

[1] See, Minn. St. 632.01; State v. Saha, 169 Minn. 514, 211 N. W. 469.

tional rights are involved,[2] and since no question is raised by the state, the record presented to us is reviewed for an answer to the following issue: Did the trial court abuse its discretion in fixing bail in the amount specified and in refusing reduction upon application?

The purpose of arrest and confinement of a person charged with a crime is to assure his presence at the time fixed for his trial.[3] The purpose of bail in cases such as this is to permit his release if appearance at trial can otherwise be guaranteed. The amount of bail which will accomplish the objective is for determination by the court having jurisdiction over the defendant when the bail is fixed.[4] Factors for consideration include:

(1) The seriousness of the offense charged and the severity of the punishment to be imposed if defendant is found guilty.

(2) The physical condition of defendant.

(3) The ability of defendant to provide bail in an amount less than that initially fixed but adequate to meet the minimal requirements of the situation.

(4) The circumstances of the case pointing to the likelihood of defendant's appearance if released on bail including his past history; his relationship to the community at the time of his arrest; and the circumstances of his apprehension.[5]

---

[2] Minn. Const. art. 1, §§ 5, 7; U. S. Const. Amend. VIII.

[3] See, Minn. St. 629.30; 6 C. J. S., Arrest, § 1.

[4] In re Application of Shetsky for Return of Bail Money, 239 Minn. 463, 60 N. W. (2d) 40.

[5] 8 Am. Jur. (2d) Bail and Recognizance, § 13, and cases cited; Forest v. United States (8 Cir.) 203 F. (2d) 83, certiorari granted, 348 U. S. 935, 75 S. Ct. 361, 99 L. ed. 733; Gusick v. Rojes, 72 Ariz. 233, 233 P. (2d) 446; Wadley v. Justice Court, 175 Cal. App. (2d) 426, 1 Cal. Rptr. 382.

[6] See cases collected in Annotation, 72 A. L. R. 801; 8 Am. Jur. (2d) Bail and Recognizance, §§ 39 to 45, 71.

In reviewing the decision made by the district court, the view of the trial judge will be accepted unless defendant shows that the discretion exercised was abused so as to deprive him of his constitutional rights.[7]

We are called upon to reverse the order of the district court upon a showing that in other cases involving murder in the first degree bail has been and is generally fixed at a substantially lower amount, and that defendant is wholly unable to produce a bail of $100,000. We cannot determine from the showing made what bail defendant contends would be adequate and possible for him to secure, but the trial court in its memorandum states that defendant suggested a bond in the amount of $20,000. In light of the decisions of other courts,[8] we do not feel that defendant has established a deprivation of his constitutional rights.

The decision of the trial court is affirmed. The right of defendant to move for a speedy trial in the event he cannot make bail may be the solution to his problem. Further, our decision is without prejudice to the right of defendant to make further application with such additional evidence as this opinion may suggest.

Affirmed.

---

[7] See, Kennedy v. Corrigan, 169 Neb. 586, 100 N. W. (2d) 550; Ex parte Malley, 50 Nev. 248, 256 P. 512, 53 A. L. R. 395, and Annotation, 53 A. L. R. 399.

[8] People ex rel. Rao v. Adams, 296 N. Y. 231, 72 N. E. (2d) 170; United States v. Dioguardi (2 Cir.) 237 F. (2d) 57; Cohen v. United States, 82 S. Ct. 8, 7 L. ed. (2d) 13; Lupino v. United States (8 Cir.) 258 F. (2d) 792. For a discussion of the limitations on the right of a court to fix bail, see Stack v. Boyle, 342 U. S. 1, 72 S. Ct. 1, 96 L. ed. 3. See discussions in 51 Mich. L. Rev. 389, 41 Yale L. J. 293; 60 L. Rev. 1154.